

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

SVEN TYREE JOHNSON,

Defendant and Appellant.

B270725

(Los Angeles County
Super. Ct. No. YA032933)

APPEAL from an order of the Superior Court of Los Angeles County, William C. Ryan, Judge. Affirmed.

Richard B. Lennon, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Noah P. Hill and Abtin Amir, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant, Sven Tyree Johnson, appeals from an order denying his Penal Code section 1170.126, subdivision (a) resentencing petition.¹ We affirm the order.

Defendant was convicted in 1998 of firearm possession by a felon (count 1). (Former § 12021, subd. (a)(1), see now § 29800, subd. (a)(1).) Defendant was also convicted of firearm possession with a prior violent offense conviction (count 2). (Former § 12021.1, subd. (a), see now § 29900, subd. (a)(1).) The evidence established that while being pursued by police officers, defendant reached into his waistband, removed a handgun and threw the firearm to the ground. (*People v. Johnson* (July 27, 1999, B121468) [nonpub. opn.] typed opn. at pp. 2-3.) The trial court found true allegations that defendant had previously been convicted of two serious or violent felony convictions. (§§ 667, subd. (d), 1170.12, subd. (b).) Defendant was sentenced to 25 years to life. (§§ 667, subd. (e), 1170.12, subd. (c).)

On December 6, 2012, defendant filed his section 1170.126, subdivision (a) resentencing petition. On March 7, 2016, the trial court denied the resentencing petition. The trial court ruled defendant was ineligible for resentencing under section 1170.126, subdivision (a) because he was armed with a firearm during the commission of the offenses. (§§ 667, subd. (e)(2)(C)(iii), 1170.12, subd. (c)(2)(C)(iii), 1170.126, subd. (e)(2).)

Defendant asserts the trial court erred because the armed during the commission exclusion for resentencing does not apply to a firearm possession conviction. (§§ 667, subd. (e)(2)(C)(iii),

¹ Further statutory references are to the Penal Code unless otherwise noted.

1170.12, subd. (c)(2)(C)(iii), 1170.126, subd. (e)(2).) Rather, according to defendant, there must be an underlying felony as to which the firearm possession has a facilitative nexus. As defendant acknowledges, the Courts of Appeal have repeatedly rejected this contention. (*People v. White* (2016) 243 Cal.App.4th 1354, 1362-1363; *People v. Hicks* (2014) 231 Cal.App.4th 275, 283-284; *People v. Brimmer* (2014) 230 Cal.App.4th 782, 797-799, 805; *People v. Elder* (2014) 227 Cal.App.4th 1308, 1312-1314; *People v. Osuna* (2014) 225 Cal.App.4th 1020, 1030-1032; *People v. White* (2014) 223 Cal.App.4th 512, 519.) We agree with the existing authority. The trial court properly concluded defendant was ineligible for resentencing.

The order under review is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

TURNER, P.J.

We concur:

KRIEGLER, J.

RAPHAEL, J.*

*Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.